

WATER COUNCIL MEETING

NH Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

November 8, 2017
9:00 a.m.

Members present: Councilors: Beaurivage, Boisvert, Butler, Clark, Gegas, Henderson, Joubert, O'Brien, and Tremblay

Members absent: Chairman Gilbert, Councilors: Hinds, Hardy, and Rawnsley

Also present were Carolyn Guerdet, Council Clerk and Paula Scott, Legal Unit

Vice Chairman Beaurivage called the meeting to order at 9:02 a.m.

1. Approval of Minutes of the October 11, 2017 Meeting

- ***Councilor Tremblay made a motion to accept the October 11, 2017 minutes, second by Councilor Clark. Motion passed unanimously with Councilors Beaurivage, Hardy, and Joubert abstaining.***

2. Status of Appeals

Paula Scott presented an update on the following appeals:

I. New Appeals

Docket No. 17-14 WC Suzanne Fournier et al. Appeal

Re: 09/18/17 approval of Alteration of Terrain Permit N. AoT-1313 issued to the Town of Milford
Hearing Officer: Not assigned

Status: October 18, 2017 received Notice of Appeal . 10/19/17 issued Receipt of Appeal letter.

10/31/17 received Motion to Intervene from Town of Milford. November 7, 2017 received Appearance from Atty. Christopher Aslin for the Department. Council to accept or dismiss Appeal today (11/8/17).

- ***Councilor Butler made a motion to accept the Appeal, second by Councilor Boisvert. Motion passed unanimously.***

II. Decision and Orders that need to be written finalized and issued.

Docket No. 16-16 WC Suzanne Fournier, et al. Appeal

Re: 08/22/16 approval of Alteration of Terrain Permit No. AoT-1149 issued to the Town of Milford
Hearing Officer: David Conley assigned on 11/17/16

Recused: Councilor Henderson

Status: September 8, 2016 received Notice of Appeal. October 10, 2016 receipt of Appeal letter. Council accepted the Appeal at their November 9, 2016 meeting. November 9, 2016 issued Appeal accepted letter. December 12, 2016 issued Notice of Pre-hearing Conference scheduled for January 23, 2017 at 10:30 a.m. 1/17/17 received Motion to Intervene from the Town of Milford. 1/23/17 PHC was held, Town of Milford's Motion to Intervene was granted and a hearing was scheduled for April 12, 2017 at 9 a.m. February 8, 2017 received Appearance from Atty. Christopher Aslin for DES. 2/15/17 received Town of Milford's Motion to Remand, etc. 2/17/17 received Appellants' Objection to Town of Milford's Motions and also received their Witness and

Exhibit list. 2/23/17 received DES' Witness and Exhibit List. March 6, 2017 received State's First Request for Information from Appellants. March 7, 2017 received Appellant's Request for Information from the State. 3/9/17 received State's Motion to Dismiss. 3/13/17 received Objection to State's Motion to Dismiss. 3/20/17 Hearing Officer requested copies of attachments referenced in Notice of Appeal that were not attached. 3/22/17 received attachments (exhibits) referenced in the Notice of Appeal as requested by the Hearing Officer. April 3, 2017 received State's Motion to Continue Hearing. 4/4/17 issued Order granting State's Motion to Dismiss the Appeal. April 27, 2017 received Appellants' Motion for Rehearing. May 2, 2017 received Objection to Motion for Rehearing. 5/10/17 Council deferred action on the Motion for Rehearing to next meeting for their attorney's opinion. No attorney's opinion has been received. June 14, 2017 Council deferred action on the Motion for Rehearing to the next meeting (9/13/17) for their attorney's opinion. September 8, 2017 received Appearance from Atty. Richard Head for the Appellants. 9/13/17 Council deferred action on the Motion for Rehearing to the next meeting (10/11/17) for their attorney's opinion. 9/26/17 received Supplement to Appellants' Motion for Rehearing and to Reconsider Order of April 4, 2017. October 2, 2017 received State's Objection to Supplement to Appellant's Motion for Rehearing and to Reconsider Order of April 4, 2017. 10/5/17 received Response to Supplement to Appellants' Motion for Rehearing and to Reconsider Order of April 4, 2017. 10/5/17 distributed draft Order on Motion for Rehearing. On October 11, 2017 Council voted to approve the Order. 10/11/17 issued Order Denying Motion for Rehearing. Docket is now closed.

III. Hearings or PHCs Pending

Docket No. 16-10 WC (PNA) – Town of Lincoln Appeal

Re: 5/20/16 Administrative Order No. 16-012 WD

Hearing Officer: David Conley assigned on 7/18/16

Status: June 17, 2016 received Notice of Appeal. 6/20/16 issued receipt of Appeal letter. Council accepted the appeal at their July 13, 2016 meeting. 7/13/16 issued Appeal accepted letter. 7/29/16 received Appearance from Attorney General. December 14, 2016 issued Notice of Pre-Hearing Conference scheduled for January 23, 2017 at 11:30 a.m. PHC was held on 1/23/17 with a 2nd PHC scheduled for April 10, 2017 at 9 a.m. April 10, 2017 issued 2nd Pre-hearing Order with deadlines for filing. May 12, 2017 received Assented-to Motion for Extension of Time. 5/15/17 issued letter granting Assented-to Motion. 5/25/17 received Motion for Summary Judgment and Incorporated Memorandum of Law. June 26, 2017 received Objection to and Cross Motion for Summary Judgment and Incorporated Memorandum of Law. July 19, 2017 received Appellant's letter re Intent to submit SurReply to State's reply to Objection. 7/20/17 received DES' Reply to Appellant's Objection to Motion for Summary Judgment. 7/27/17 received Town of Lincoln's SurReply. October 25, 2017 distributed draft Order on Motion for Summary Judgment. Council to act on draft Order today (11/8/17).

- ***Councilor Boisvert made a motion to accept the Order, second by Councilor Butler. Motion passed unanimously.***

Docket No. 17-01 WC (PNA) – Christopher and Rebecca Crowe Appeal

Subject: 12/21/16 Administrative Order No. 16-033 WD

Hearing Officer: David Conley, Esq., assigned on 3/15/17

Status: January 19, 2017 received Notice of Appeal. 1/20/17 issued Insufficient Appeal letter. February 17, 2017 received Revised Notice of Appeal. March 1, 2017 issued Receipt of Revised Appeal letter. Council to accept or decline appeal at their March 8, 2017 meeting. Council accepted Appeal at their March 8, 2017 meeting and issued Appeal accepted letter. April 6, 2017 issued Notice of Pre-hearing Conference scheduled for May 2, 2017 at 9 a.m. 4/12/17 received Appearance for Atty. Christopher Aslin. May 2, 2017 issued Pre-hearing Order scheduling hearing

for September 13, 2017 at 9 a.m. August 14, 2017 issued 2nd Pre-hearing Order scheduling a 3rd PHC for Oct. 30, 2017 at 11:30 a.m. 10/30/17 due to power outage, 2nd PHC was cancelled. November 1, 2017 issued Notice of rescheduled PHC for December 4, 2017 at 10:30 a.m.

Docket No. 17-03 WC – Town of Hampton, NH Appeal

Subject: 1/13/17 Administrative Order No. 17-001 WD

Hearing Officer: David Conley, Esq., assigned on 3/15/17

Status: February 10, 2017 received Notice of Appeal. 2/15/17 issued Receipt of Appeal letter. Council to accept or decline appeal at their March 8, 2017 meeting. Council accepted Appeal at their March 8, 2017 meeting and issued Appeal accepted letter. April 6, 2017 issued Notice of Pre-hearing Conference scheduled for May 2, 2017 at 10 a.m. 4/12/17 received Appearance for Atty. Mary Maloney. 4/25/17 received DES' Assented-to Motion to Continue. May 1, 2017 issued letter granting Assented-to Motion to Continue. 5/2/17 issued Notice of Pre-hearing Conference scheduled for May 15, 2017 at 9 a.m. 5/11/17 received DES' Assented-to Motion to Continue Hearing. 5/12/17 issued letter granting Assented-to Motion to Continue and rescheduled PHC to July 17, 2017 at 9 a.m. June 7, 2017 issued letter rescheduling PHC to July 24, 2017 at 10 a.m. July 24, 2017 issued Pre-hearing Order scheduling a 2nd PHC for Oct. 10, 2017 at 9 a.m. and the Hearing for December 13, 2017 at 9 a.m. 10/30/17 due to power outage, 2nd PHC was cancelled. November 1, 2017 issued Notice of rescheduled PHC for December 4, 2017 at 10:30 a.m.

Docket No. 17-06 WC – Town of Hampton, NH, North Hampton Water Commission and Town of North Hampton Appeal

Subject: 03/29/17 Administrative Order No. 17-006 WD issued to Wiggin Way home Owners Association AND Aquarion Water Company of NH, Inc.

Hearing Officer: David Conley, Esq., assigned on 5/17/17

Recused member: Councilor Boisvert

Status: April 28, 2017 received Notice of Appeal. May 1, 2017 issued receipt of Appeal letter. Council accepted the appeal at the May 10, 2017 meeting. 5/11/17 issued Appeal accepted letter. 5/16/17 received Assented-To Motion to Consolidate (Docket No. 17-06 WC and Docket No. 17-07 WC). 5/17/17 received Appearance from Atty. Marcia Brown. 5/18/17 received Motion to Intervene. 5/25/17 issued ruling Granting Motion to Consolidate and Motion to Intervene. 5/25/17 issued Notice of Pre-hearing Conference scheduled for June 12, 2017 at 9:30 a.m. 5/29/17 received State's request to Continue Pre-hearing Conference. 6/7/17 issued letter granting request and rescheduling PHC for July 24, 2017 at 9 a.m. 6/13/17 received Request to Continue PHC. 6/15/17 issued letter granting Request to Continue and rescheduling the PHC for Aug. 14, 2017 at 10 a.m. 6/19/17 received Appearance of Attorney Jason Reimers and Assented-To Petition to Intervene. 6/22/17 issued letter granting Petition to Intervene. August 24, 2017 received Parties agreed to Procedural Schedule and Request to Modify PHO. 8/25/17 issued letter granting request. September 8, 2017 received Withdrawal of Appearance from Atty. Christopher Aslin and received and Appearance from Atty. Mary Maloney. November 1, 2017 received Assented-to Motion for Extension.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

3. New Business

a. Env-Dw 402 Groundwater Discharge Permits and Registrations

Chip Mackey and Holly Green, Drinking Water and Ground Water Bureau

The current rule is going to expire November 21st. This is a re-adoption of the 2009 adopted rule. Requires all public water systems that are supplied by groundwater, if they have a bacterial contamination, to go back and see if it comes from their well. Please contact Chip if you have any comments. It was noted the summaries that are sent to the Council are very helpful. Questions were addressed.

4. Old Business

It was asked to have paperwork that is to be reviewed/voted upon at the meeting be mailed as soon as received so there is sufficient time to review.

Discussion was held regarding the paperwork received by the Council members and the length of time to hold and manage. Also how it can be changed that future submissions be double-sided.

Discussion was held regarding re-nomination of board members. Councilors Boisvert, Rawnsley, and O'Brien terms have expired. It was suggested the Commissioner should have a discussion/write a letter to the Governor regarding nominations to the boards, committees, and commissions and outline concerns expressed today. Chairman Gilbert to talk to Commissioner Scott first with this recommendation. To be continued as old business for December.

5. Next Meeting

December 13, 2017 meeting will be at 8:30 a.m., with Docket No.17-03 Town of Hampton Hearing at 9 a.m.

6. Adjournment

- ***Councilor O'Brien made a motion to adjourn, second by Councilor Butler. Motion passed unanimously.***

Meeting was adjourned at 9:48 a.m.